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Dona G. Bradshaw

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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUN - 1 1994

IN THE MATTER OF:

DOCKET NO. 93-75

TRINITY BROADCASTING OF FLORIDA, INC.
and
GLENDALE BROADCASTING COMPANY
Miami, Florida

DATE OF HEARING: May 5, 1994

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FEDERAL COMMUNICATIONS COMMISSION
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TRINITY BROADCASTING OF FLORIDA, INC.)
and)
GLENDALE BROADCASTING COMPANY)

MM DOCKET NO. 93-75

Miami, Florida)
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The above-entitled matter came on for hearing pursuant to
notice before Judge Joseph Chachkin, Administrative Law Judge,
at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 3,
on Thursday, May 5, 1994 at 9:00 a.m.

APPEARANCES:

On behalf of Trinity Broadcasting of Florida, Inc.:

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I N D E X

<u>WITNESS</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
David A. Gardner				
By Mr. Bechtel	5699		5721,5725	
By Mr. Holt		5699		5724
By Mr. Schonman		5719		
<u>E X H I B I T S</u>				
<u>Glendale</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>	
Exhibit No. 230	5721	5722		
Exhibit No. 231	5725	5738		
<u>TBF, INC.</u>				
Exhibit No. 277		5713		
Exhibit No. 283		5736		
Exhibit No. 294		5714		
Exhibit No. 295	5737	5737		
Hearing Began: 9:00 a.m.	Hearing Ended: 10:20 a.m.			

1 P R O C E E D I N G S

2 JUDGE CHACHKIN: Let's go on the record. Any
3 preliminary matters or should we get to I assume our final
4 witness?

5 MR. BECHTEL: Yes. This is David Gardner, sir.
6 Whereupon,

7 DAVID A. GARDNER

8 having first been duly sworn, was called as a witness herein
9 and was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BECHTEL:

12 Q Mr. Gardner, would you state for the record your
13 name and business address, please?

14 A David Gardner, Post Office Box 38, Carlisle,
15 Pennsylvania.

16 Q And do you have before you Glendale Exhibit 227?

17 A Yes.

18 Q And are you the David Gardner referred to in that
19 exhibit?

20 A Yes.

21 MR. BECHTEL: The witness is available for cross
22 examination.

23 JUDGE CHACHKIN: Mr. Holt?

24 MR. HOLT: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MR. HOLT:

2 Q Mr. Gardner, I'd like to begin by directing your
3 attention to Page 19 of your direct written testimony which is
4 Glendale Exhibit 227. It's a handwritten note bearing the
5 date 10/17/91. Do you have that note before you?

6 A Yes.

7 Q This note was prepared by you at the request of Lee
8 Sandifer, correct?

9 A I don't recall the reason for preparing this note.

10 Q It was prepared by you at the request of Lee
11 Sandifer, correct?

12 A I don't recall the reason for preparing this note.

13 Q My question though was that it was prepared by you
14 at the request of Lee Sandifer

15 A I don't recall who asked me, if anybody, to prepare
16 this note.

17 Q Let me direct your attention to Page Nine of your
18 deposition transcript. Actually we can begin on Page Seven,
19 Line 20. Question: "Do you have any recollection of why this
20 document was prepared?" Answer: "I have no recollection as
21 to why this document was prepared, independent of what I see
22 on the document." Question: "What do you see on the
23 document?" Answer: "It refers to the cost of filing --"

24 JUDGE CHACHKIN: Well, wait a minute. That's
25 consistent with what he testified to. He has no recollection

1 of why the document was prepared. Then you proceeded to ask
2 him questions of what's on the document, et cetera, et cetera.
3 But that's not inconsistent with what he said here.

4 MR. HOLT: Further, Your Honor, if you proceed,
5 beginning with Line 13 on Page Eight, he says, "I recall
6 receiving instructions from Lee Sandifer to determine the cost
7 of --"

8 JUDGE CHACHKIN: Fine. So ask him those questions
9 and see what response you get. But about the document, this
10 is consistent. He says he doesn't recall why he prepared this
11 particular document.

12 MR. HOLT: Yes, Your Honor.

13 JUDGE CHACHKIN: I mean, isn't that what he said?

14 MR. HOLT: Yes, Your Honor. I understand. Let me
15 direct your attention to a document that's been marked as TBF
16 Exhibit 231. That would be in a thick series of binders --
17 thick series of exhibits. It's admitted into evidence.

18 JUDGE CHACHKIN: I think the witness has it.

19 BY MR. HOLT:

20 Q It's a document dated 10/30/91. Do you have that
21 document before you?

22 A Yes.

23 Q Now, this is a document that was prepared by you in
24 response to an offer you had received from Trinity for the
25 purchase of TV40 and the five low-power construction permits

1 held by Raystay, correct?

2 A I believe it is, yes.

3 Q And after -- you were the person who received that
4 offer from Trinity, correct?

5 A I believe so, yes.

6 Q And after you received the offer, you discussed it
7 with Mr. Sandifer, did you not?

8 A Yes.

9 Q And Mr. Sandifer advised you that the offer -- that
10 Trinity's offer for TV40, as we see here as \$150,000, was
11 unacceptable, but that you should continue to develop the sale
12 of the construction permits to Trinity, did he not?

13 A Yes.

14 Q And there came a time, did there not, when you
15 received instructions from George Gardner to terminate
16 Raystay's negotiations with Trinity regarding the sale of the
17 low-power construction permits, correct?

18 A I received written instructions to terminate those
19 discussions.

20 Q And if we can refer to TBF Exhibit 238 -- do you
21 have that document before you?

22 A Is that 12/3/91 --

23 Q Correct.

24 A Yes.

25 Q These are the written instructions that you're

1 referring to, are they not?

2 A Yes.

3 Q Now, between your time -- the time of your
4 conversation with Lee Sandifer regarding Trinity's October
5 30th offer and the time that George Gardner sent you this note
6 or you received this note from George Gardner, you discussed
7 with Lee Sandifer the progress that you had made in your
8 negotiations with Trinity to see the five construction
9 permits. Isn't that right?

10 A Lee Sandifer and I had ongoing discussions so that I
11 could update him on the Trinity negotiations.

12 Q And you apprised him of the fact that you were
13 continuing to move forward with Trinity's offer with respect
14 to the permits, correct?

15 A Yes.

16 Q I'd like to direct your attention to a -- to TBF
17 Exhibit 232. It's a letter dated November 7, 1991. Do you
18 have that document before you?

19 A Yes.

20 Q Now, you received this letter on or about
21 November 7, 1991, correct?

22 A I believe so, yes.

23 Q Now, if you focus on the figure for engineering fees
24 as set forth in -- next to the Number One -- do you see that?

25 A Yes.

1 Q Isn't it a fact that you don't recall discussing
2 this figure with Mort Berfield at any time prior to your
3 receipt of this letter on or about November 7, 1991?

4 A I don't recall discussing this figure with Mort
5 Berfield.

6 Q In fact, you don't recall discussing any figure for
7 engineering fees with Mort Berfield at any time prior to the
8 time that you received this letter on or about November 7,
9 1991, true?

10 A I don't recall discussing any specific figure with
11 Mort Berfield.

12 Q I'd like you to keep this letter handy --

13 JUDGE CHACHKIN: What do you mean "specific figure"?
14 What does that mean? You say you don't recall a specific
15 figure. What figures did you discuss with him?

16 WITNESS: I -- at some point in time, I made Mort
17 Berfield aware that I was missing a payment for an invoice to
18 Bob Hoover and I told him -- I remember telling Mort Berfield
19 that I couldn't find those figures. So that's what I mean
20 when I don't remember discussing a specific figure because I
21 couldn't remember what it was.

22 JUDGE CHACHKIN: Well, did you discuss any
23 approximation as to how much the costs were --

24 WITNESS: No, I couldn't remember anything about the
25 cost and I couldn't find any reference to it.

1 JUDGE CHACHKIN: All right. Go ahead.

2 BY MR. HOLT:

3 Q I'd like you to keep your -- keep this November 7th
4 letter handy while I direct your attention to a document
5 that's been marked for identification as TBF Exhibit 277.
6 Now, this -- the document that's been marked for
7 identification as TBF Exhibit 277 was an invoice dated March
8 31, 1989 on the letterhead of R.L. Hoover, correct?

9 A Yes.

10 Q And you'll see here that it refers to the
11 preparation of five LPTV applications for a charge of \$1,500
12 each, does it not?

13 A Yes.

14 Q And that refers to the preparation of three F.A.A.
15 forms for a charge of \$175 each, correct?

16 A Yes.

17 Q Now, isn't it true, Mr. Gardner, that you've been
18 told by Mr. Berfield that he referred to this invoice of March
19 31, 1989 to prepare his letter of November 7, 1991?

20 A Yes.

21 Q Isn't it also true that this March 31, 1989 invoice
22 is the only invoice that Mr. Berfield said he referred to at
23 the time he prepared his November 7th letter that dealt with
24 Mr. Hoover's fees?

25 A I believe so, yes.

1 Q In fact, you were informed of these facts during a
2 meeting that you had with Mr. Berfield the day before your
3 deposition in this proceeding, were you not?

4 A Yes.

5 Q And that was during a meeting that you had with Mr.
6 Berfield in the offices of Cohen and Berfield in which you
7 discussed the March 31, 1989 document as well as other
8 documents related to this proceeding, correct?

9 A Yes.

10 Q After you received Mr. Berfield's letter of November
11 7th, you concluded that the figure set forth next to the entry
12 for Mr. Hoover's engineering fees seemed incorrect, didn't
13 you?

14 A Yes.

15 JUDGE CHACHKIN: Excuse me. What are we talking
16 about now? Which figure was incorrect?

17 MR. HOLT: I'm sorry. The figure set forth in the
18 November 7th letter next to Mr. Hoover's fees.

19 JUDGE CHACHKIN: You're talking now about the
20 exhibit, the 232?

21 MR. HOLT: 232, yes. Yes, Your Honor.

22 BY MR. HOLT:

23 Q Let me back you up then so -- to answer the
24 question. I believe you've testified that after you received
25 Mr. Berfield's letter of November 7, 1991, you concluded that

1 the figure set forth next to the entry for Mr. Hoover's
2 engineering fees seemed incorrect.

3 A Yes.

4 Q But you could only verify the figure of \$7,275
5 because the March 31st invoice is the only invoice that you
6 could find from Mr. Hoover. Isn't that right?

7 A I don't recall if I had this invoice at that time.

8 Q Let me direct your attention to Page 68 of your
9 deposition testimony.

10 JUDGE CHACHKIN: Isn't there handwriting on the
11 invoice itself?

12 MR. HOLT: Yes, Your Honor.

13 JUDGE CHACHKIN: Whose handwriting is that?

14 WITNESS: Are you referring to this?

15 JUDGE CHACHKIN: I'm referring to 277. It says
16 "OK". Is that your handwriting, "DG"?

17 WITNESS: Yes, sir.

18 JUDGE CHACHKIN: So you had this document.

19 WITNESS: I had this -- when this invoice came in,
20 that is how I would've approved it for payment in 1989. So
21 it's possible that the invoice was in our offices, yes.

22 JUDGE CHACHKIN: All right.

23 BY MR. HOLT:

24 Q I've directed your attention to Page 68 of your
25 deposition testimony. I'd like to read from Line Five through

1 Line 16. Question: "After receiving this letter, do you
2 recall whether you reviewed any documents at any time to
3 confirm the accuracy of the figures reflected in the letter?"

4 A I must be on the wrong page.

5 Q Page 68?

6 A 68, Line 16. Are we on the deposition?

7 Q Yes, sir.

8 A My Line 16 starts with the word "figure".

9 Q I was beginning with Line Five, but I want to make
10 it -- I want to make it clear that we're discussing the
11 November 7th letter.

12 A I see. You're on Line Five, now.

13 Q Yes. But I want to -- I want you to be clear that
14 we were discussing the November 7th letter, so let me make
15 sure that I direct you -- can confirm that for you. We began
16 discussing, I think, the letter on Page 64, Line 17 with the
17 questions regarding whether you had any conversations with the
18 letter regarding how he had arrived at the figure of -- with
19 Mr. Berfield regarding how he had arrived at the figure of
20 \$15,397. That's where the conversation began. I'd like to
21 direct your attention though to Page 68, starting with Line
22 Five. Question: "After receiving this letter, do you recall
23 whether you reviewed any documents at any time to confirm the
24 accuracy of the figures reflected in the letter?" Answer:
25 "In the fall of 1991?" Question: "At any time." Answer:

1 "At some point in time, I recall that the engineering fees
2 seemed to be incorrect to me, but I could only find the
3 invoice from Bob Hoover which is all I could verify and I
4 recall that the \$1,092 from Telsa there, I saw an invoice
5 verifying that figure." Are those the questions and the
6 answers that were provided at your deposition?

7 A Yes.

8 Q And were those answers that you provided true at the
9 time you gave them?

10 A Yes.

11 Q It's true, is it not, that you referred to the
12 invoice from Telsa prior to the time that you certified your
13 expense certification on January 6, 1992, correct?

14 A Yes.

15 MR. BECHTEL: I'm going to object to that. That's a
16 misleading question. The Telsa invoice wasn't involved in the
17 expense certification as Counsel knows.

18 MR. HOLT: But I'm simply trying to establish the
19 period of time in which he made this review of his documents
20 after receiving the November 7th letter.

21 MR. BECHTEL: You didn't use the time -- the date in
22 your question. I stand on my objection.

23 JUDGE CHACHKIN: Could you repeat the question
24 again? I'm confused by all this, frankly, because I didn't
25 think there was any question that Mr. Hoover had charged

1 \$7,275 and I don't know where we're going with this frankly.
2 He says he paid the bill. This was the amount, this is the
3 invoice, this is all that's being requested. So why are we
4 having all this long discussion about it? I don't understand
5 this frankly.

6 MR. HOLT: Well, Your Honor, if you refer to the
7 March 31, 1989 invoice, you'll see that it refers specifically
8 to the preparation of five LPTV applications and for a charge
9 of \$1,500 each less a ten percent discount. It also refers to
10 the preparation of three FAA forms and my point is that the
11 invoice on its face shows that it was -- there was a one-fifth
12 allocation as opposed to a one-third.

13 JUDGE CHACHKIN: It doesn't show a one-fifth
14 allocation. It just shows what he charged.

15 MR. HOLT: Charged per application, correct.

16 JUDGE CHACHKIN: Well, it doesn't say per
17 application. It says this is what he charged for preparing
18 five -- you could draw the conclusion --

19 MR. HOLT: For each. It says each, Your Honor

20 JUDGE CHACHKIN: -- that he allocated it. I don't
21 know how he allocated it. This was his total sum that he
22 charged for preparing five applications.

23 MR. HOLT: Your Honor, if you look --

24 JUDGE CHACHKIN: I understand, even if it says
25 charge, \$1,500 each. But what does that have to do with the

1 total of \$7,275, regardless if you want to argue about what he
2 charged per application? Why are we dealing with the total
3 charge which is not in dispute?

4 MR. HOLT: The amount -- what's in dispute -- what's
5 in dispute, Your Honor, is how they arrived at the allocation
6 of engineering fees set forth in the certification of expenses
7 --

8 JUDGE CHACHKIN: I understand that.

9 MR. HOLT: -- and they did that by dividing it by
10 three and in Mr. Hoover's invoice, it clearly reflects that he
11 made a charge of \$1,500 each --

12 JUDGE CHACHKIN: I understand that.

13 MR. HOLT: -- less ten percent.

14 JUDGE CHACHKIN: I understand that. But all we're
15 dealing with now is the total sum. All your questions have
16 dealt with it as a total sum of \$7,275. That's what all your
17 questions have dealt with. They haven't dealt with the way
18 Mr. Hoover parcelled out his -- how he -- Mr. Hoover -- what
19 he put in his invoice, how he broke it down. All your
20 questions have dealt with the total sum somehow which is not
21 in dispute. I mean, no one's disputing this is what Mr.
22 Hoover charged.

23 You're disputing -- you're claiming it should've
24 been -- one-fifth is all they should've allowed. But that's
25 not what we're talking -- asking the witness about. You're

1 asking the witness about this total sum which is not in
2 dispute. I don't understand where you're going.

3 MR. HOLT: I'm asking the witness, Your Honor,
4 simply of his knowledge of the invoice and whether he referred
5 to the invoice before -- prior to the time that he certified
6 the expense allocation.

7 JUDGE CHACHKIN: I assume this is a prelude to what
8 you're getting at rather than just dealing with the total sum?
9 I mean, this is laying a foundation for arguing about the fact
10 that -- the way Mr. Hoover charged?

11 MR. HOLT: Yes, Your Honor.

12 JUDGE CHACHKIN: Well, I hope so. Otherwise, I
13 don't know where we're going frankly. Go ahead.

14 BY MR. HOLT:

15 Q Mr. Gardner, it's a fact, is it not, that you, after
16 receiving the November 7th letter, November 7, 1991 letter
17 from Mr. Berfield, you referred to Mr. Hoover's invoice of
18 March 31, 1989 to verify the figure specified in Mr.
19 Berfield's letter?

20 A It appears that I did, yes.

21 Q And you conducted that review prior to the time that
22 you certified the Red Lion expense certification.

23 A That would seem to be the case, yes.

24 MR. HOLT: Your Honor, at this time, I would move
25 that TBF Exhibit 276 for identification be received into

1 evidence as TBF Exhibit 276.

2 JUDGE CHACHKIN: Any objection? That's the -- what
3 number?

4 MR. HOLT: 277, Your Honor. I'm sorry.

5 JUDGE CHACHKIN: The invoice?

6 MR. HOLT: Yes, Your Honor.

7 JUDGE CHACHKIN: Any objection to TBF Exhibit 277?

8 MR. BECHTEL: No, sir.

9 (Whereupon, the document referred to
10 as TBF Exhibit Number 277 was
11 received into evidence.)

12 JUDGE CHACHKIN: Yesterday, you had identified
13 Exhibit 294, a letter from Mr. Cohen to George Gardner. You
14 never moved it for admission. I don't know if you plan on it
15 or I just wanted to point it out.

16 MR. HOLT: Yes, Your Honor. I would like to move
17 that into evidence at this time.

18 JUDGE CHACHKIN: Any objection to 294?

19 MR. BECHTEL: May I consult with my co-counsel? May
20 I inquire as to the purpose of the offer?

21 JUDGE CHACHKIN: Mr. Holt?

22 MR. HOLT: Yes, Your Honor. I was consulting with
23 co-counsel. The document is being offered, again, in line
24 with our theory that the compliance program was not viewed by
25 Glendale as truly being an aspect of operating the low-power

1 construction permits at the time of document production during
2 the last phase of the proceeding.

3 MR. BECHTEL: Well, I don't think that's a rational
4 relationship to the document myself. However, I have no
5 objection to the receipt. I can use it.

6 JUDGE CHACHKIN: TBF 294 is received.

7 (Whereupon, the document referred to
8 as TBF Exhibit Number 294 was
9 received into evidence.)

10 MR. HOLT: And with that, Your Honor, I would
11 request a stipulation from Mr. Schauble that this document was
12 not produced during the last phase of the proceeding.

13 MR. BECHTEL: I'll take that request under
14 advisement. I don't know if we're going to stipulate or not.

15 JUDGE CHACHKIN: Go ahead, Mr. Holt.

16 BY MR. HOLT:

17 Q Mr. Gardner, there came a time, did there not, when
18 you called the offices of Cohen and Berfield to request that
19 an expense certification be prepared for the Red Lion
20 assignment application? Is that right?

21 A Yes.

22 Q And you called Cohen and Berfield because that firm
23 was Raystay's communications counsel at the time, correct?

24 A Yes.

25 Q And you expected that they would prepare the expense

1 certification for the Red Lion assignment application, did you
2 not?

3 A Yes.

4 Q You never considered using any other firm to prepare
5 the expense allocation -- certification, did you?

6 A I don't recall thinking about using any other firm.

7 Q You're the person who was responsible for preparing
8 and filing Raystay's five applications for the Lebanon,
9 Lancaster, and Red Lion low-power television stations,
10 correct?

11 A You're discussing -- you're referring to the initial
12 application?

13 Q Yes, sir.

14 A Back in 1988 or 1989?

15 Q Correct.

16 A Yes.

17 Q Isn't it true that at the time you filed those
18 applications, you gave no consideration to applying for
19 anything less than five construction permits?

20 A I don't recall giving any consideration to applying
21 for any less than five construction permits.

22 Q And you gave no consideration to applying for
23 anything other than -- I'll withdraw that question. In fact,
24 the concept was always to apply for the Lebanon -- the five
25 construction permits, two for Lebanon, two for Lancaster, and

1 one for Red Lion, in order to create a network of low-power
2 television stations to serve those markets, correct?

3 A No.

4 Q That was not always the concept?

5 A No. There were many concepts -- there were more
6 than one concept that I considered, but that was the one that
7 was acted upon.

8 Q Which resulted in the filing of the application?

9 A Yes.

10 Q I'd like to direct your attention to the
11 certification of expenses. It can be found at Page 20 of your
12 direct written testimony. Do you have that document before
13 you?

14 A Yes.

15 Q If you read the introductory line there, it states
16 that, "I, David A. Gardner, hereby certify that I am in
17 management at Raystay Company and am familiar with the
18 expenses incurred by Raystay in obtaining the construction
19 permit being assigned." My question is at the time that you
20 signed this certification, you were aware that an allocation
21 had been made among several construction permits to arrive at
22 the figures specified in this certification, were you not?

23 A Could you say that question, again, please?

24 Q At the time that you signed this certification of
25 expenses, were you not aware that an allocation had been made

1 among several construction permits in order to arrive at the
2 figures specified in this certification?

3 A In preparation for these proceedings, I've been made
4 aware that that is how these figures were arrived at.

5 Q It's your testimony that you were unaware that an
6 allocation had been made at the time you signed this
7 certification of expenses?

8 A I don't recall actually signing this certification,
9 so therefore, I don't recall what I might've been aware of at
10 the time I signed this certification.

11 Q Had you been provided these figures by anyone?

12 A At what time?

13 Q Or were these figures you arrived at yourself?

14 A At what time?

15 Q Well, my question is did you arrive at the figures
16 specified in this certification of expenses or did you -- were
17 you provided them by someone else?

18 A In preparation for these proceedings, I've been made
19 aware that this document was prepared by the offices of Cohen
20 and Berfield.

21 Q Now, it specifies some figures on it, doesn't it?

22 A Yes.

23 Q My question is did you -- were you the one who
24 calculated these figures or were they provided to you by
25 someone else?

1 JUDGE CHACHKIN: Well, why don't you ask the first
2 question first?

3 BY MR. HOLT:

4 Q Were you the one that -- were you the person who
5 calculated these figures?

6 A I don't recall calculating these figures.

7 Q Do you have any recollection of them being provided
8 to you by someone else?

9 A I don't have any recollection of them being provided
10 to me by someone else. However, there was a document that
11 came from Cohen and Berfield and it was in this form when it
12 came from Cohen and Berfield.

13 Q Do you recall discussing any of the figures
14 specified in this certification with anyone from Cohen and
15 Berfield at any time before -- prior to the time that you
16 signed this certification?

17 A Prior to the time, is that --

18 Q That you signed the certification which is dated
19 January 6, 1992?

20 A Does that go back the whole way to November 7th or
21 just a few days?

22 Q Let's say within the month preceding the date of the
23 certification.

24 A I don't recall any such discussions.

25 MR. HOLT: I have no further questions of this

1 witness, Your Honor.

2 JUDGE CHACHKIN: Does the Bureau have any questions?

3 MR. SCHONMAN: Your Honor, can we have a brief --

4 JUDGE CHACHKIN: Let's go off the record.

5 (Off the record 9:32 a.m. On the record 9:33 a.m.)

6 CROSS EXAMINATION

7 BY MR. SCHONMAN:

8 Q Mr. Gardner, do you still have before you your
9 direct testimony? That's Glendale Exhibit 227, Page 20.
10 That's the certification of expenses.

11 A Yes.

12 Q Mr. Gardner, let's focus on the Cohen and Berfield,
13 P.C. legal fees in the amount of \$7,698. Do you see that?

14 A Yes.

15 Q What was your understanding on January 6, 1992 as to
16 the basis for that figure?

17 A I don't recall what my understanding would've been
18 on January 6, 1992.

19 Q Mr. Gardner, what effort, if any, did you make to
20 determine whether that figure of \$7,698 related specifically
21 to the Red Lion C.P. on or before January 6, 1992?

22 A In preparing the cost figures, I relied upon Mort
23 Berfield to provide the Cohen and Berfield legal fees.

24 Q Is it your testimony that you received this figure
25 of \$7,698 from Mr. Berfield?

1 A In preparation for these proceedings, I have been
2 made aware that this certification of expense, which I believe
3 was the first time I saw the \$7,698, was a document that was
4 prepared in the offices of Cohen and Berfield by Lew Cohen and
5 then FAX'ed to me.

6 Q Just so I understand your testimony correctly, the
7 first time you saw this \$7,698 figure was when you received
8 that facsimile from Mr. Cohen. Is that your testimony?

9 A I don't recall seeing this figure on any document
10 prior to this certification of expense and I don't recall any
11 conversations that I'd been -- that I was involved in that
12 included this \$7,698 figure.

13 Q Mr. Gardner, let's move on to Robert Hoover
14 engineering fees in the amount of \$2,425. Do you see that?

15 A Yes.

16 Q What effort, if any, did you make on or before
17 January 6, 1992 to substantiate that figure as relating
18 directly to the Red Lion C.P.?

19 A In the fall of 1991, I had apparently been able to
20 -- or someone had gotten Bob Hoover's invoice to Cohen and
21 Berfield for the figures that we were able to find on the Bob
22 Hoover invoice and I relied on the offices of Cohen and
23 Berfield to make an allocation which is how they came up with
24 the \$2,425 figure.

25 Q So you were aware on January 6, 1992 that that